

REMARKS

Reconsideration and removal of the grounds for rejection are respectfully requested.

Claims 1-19 were in the application, claims 1-19 were cancelled and new claims 20-27 substituted therefore.

The rejection of claims 1-19 under 35 USC 112, first and second paragraph are rendered moot by this amendment.

The objection to the specification is noted, and corrections made where indicated. The organization of an application is a suggested format and so correction of non-required changes have not been made, due as well to time constraints. Where errors were noted they have been corrected.

New claims 20-27 have been amended as to form and to correct the numerous grammatical deficiencies and for clarity. No new matter was involved in this amendment.

Claims 1-19 were rejected under 35 USC 103(a) as being obvious over Pochet, U.S. Patent no. 6,231,142 in view of Betsch, U.S. Patent no. 5,202,818.

To establish a prima facie case of obviousness based on a combination of references, there should be some teaching, suggestion or motivation in the prior art to make the specific combination that was made by the applicant. In re Raynes, 7 F.3d 1037, 1039, 28 U.S.P.Q.2D (BNA) 1630, 1631 (Fed. Cir. 1993); In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2D (BNA) 1443, 1445 (Fed. Cir. 1992). However, the search for a teaching or suggestion should not be rigid, and a more flexible approach to a determination of obviousness should be used so as to avoid a conflict with common sense. KSR International Co. v. Teleflex Inc. et al., 2007 U.S. Lexis 4745 U.S. Supreme Court, April 30, 2007. In this decision, however, the Supreme Court reaffirmed that

obviousness can not be established by a hindsight combination to produce the claimed invention. In re Gorman, 933 F.2d 982, 986, 18 U.S.P.Q.2D (BNA) 1885, 1888 (Fed. Cir. 1991). It is the prior art itself, and not the applicant's achievement, that must establish the obviousness of the combination.

In the rejection, the examiner admitted that Pochet does not disclose the external wall of folded sheet metal as shown in Figure 2, but alleged that the incorporation of the folded sheet metal of Betsch would arrive at the applicants' invention. However, fact that Betsch shows folded sheet metal alone would not lead one to the structure of the applicants' invention. There are numerous structural features shown in Betsch and nothing to lead one to pick and choose among these to arrive at the applicants invention. Moreover, the structure of Pochet is distinct and itself unitary, and an attempt to incorporate these other structures likely lead to a form entirely different from the one of Pochet and moreover one which would not meet all the functional requirements of Pochet.

A modification which would detrimentally effect the performance of the Pochet form is not one which would lead one skilled in the art to the applicants invention. Without such hindsight, one skilled in the art would not be led to the applicants invention.

Note that the Profile of Pochet has many more features, that is, bends and formed walls, beyond the fastening web 12; there are a number of channels defined, and a plurality of bends forming multiple structures with different orientations, and so many

variations in structure, it is difficult to see how one would pick and chose among them to select only those to which the folds of Betsch could be incorporated to arrive at the applicants' invention

In view of the above, one skilled in the art would not find the present invention to be obvious, nor find any teaching or suggestion to lead him to provide the specific combination of structural features to arrive at the profile the applicant has created. Rather, one skilled in the art would be led away from the applicants' invention, and it is believed that claims 20-27 are patentable over the cited art.

Based on the above, favorable consideration and allowance of the application is respectfully requested. However, should the examiner believe that direct contact with the applicant's attorney would advance the prosecution of the application the examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,

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